

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.20730 of 2021

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M/s B.L. Kashyap and Sons Ltd. having its place of business of Fulwari Sharif, AIIMS Patna, in front of DAV School, Janipur Road, Patna through its authorised representative namely Purushottam Kumar Mittal male aged about 58 years son of Khem Chand Mittla resident of A-64, 2nd Floor, Gali No. - 1, West Nathu Colony, Mandoli, Mandoli Saboli, North East Delhi - 110093.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary cum Commissioner, Department of State Taxes, Government of Bihar, Patna.
2. The Additional Commissioner of State Taxes (Appeal) Central Division, Patna.
3. The Deputy Commissioner of State Taxes, Special Circle, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Gautam Kumar Kejriwal
For the Respondent/s : Mr.Vikash Kumar (Sc11)

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

(The proceedings of the Court are being conducted by Hon'ble the Chief Justice/Hon'ble Judges through Video Conferencing from their residential offices/residences. Also the Advocates and the Staffs joined the proceedings through Video Conferencing from their residences/offices.)

Date : 04-01-2022

Petitioner has prayed for the following relief(s):

“a) For issuance of a writ in the nature of certiorari for quashing of an appellate order dated 02.08.2021 passed by the respondent number 2 and issued vide memo number 456/Patna in Appeal Case Number AD1003210031076 whereby the appeal preferred by the petitioner against the order dated 10.02.2021 passed by the respondent No. 3 has been rejected without appreciating the factual and legal issues



contended and raised by the petitioner in appeal;

b) For further issuance of a writ in the nature of certiorari for quashing of the order dated 10.02.2021 passed by the respondent number 3 under section 73 of the Bihar Goods and Services Tax Act 2017 (hereinafter referred to as the Bihar act 2017 for short) read with Central Goods And Services Tax Act 2017 (hereinafter referred to as the central act 2017 for short);

c) For further holding and a declaration that the impugned order dated 10.02.2021 passed by the respondent No. 3 is an erroneous exercise of jurisdiction by the respondent number 3 as the same is not preceded by a proceeding under sections 61 of the Bihar act 2017 read with central act 2017;

d) For further holding and a declaration that the respondent No. 3 has further committed an error of jurisdiction by not taking steps in terms of section 42 (3) of the Bihar act 2017 and central act 2017 before invoking the jurisdiction under section 73 of the said acts;;

e) For further issuance of a writ or order a direction restraining the respondents from taking any coercive action in terms of section 79 of the Bihar act 2017 read with central act 2017 against the petitioner for recovery of the amount in demand in terms of the impugned order of assessment dated 10.02.2021 passed by the respondent No. 3 during the pendency of the instant writ application or thereafter;

f) For grant of any other relief or reliefs to which the petitioner is found entitled in the facts and circumstances of this case.”

It is brought to our notice that vide impugned order dated 02.08.2021 passed by the Respondent No. 2 namely the Additional Commissioner of State Taxes (Appeal), Central



Division, Patna in Appeal Case No. AD1003210031076, the appeal of the petitioner against the order dated 10.02.2021 passed by Respondent No. 3, the Deputy Commissioner of State Taxes, Special Circle, Patna under Section 73 of BGST Act, 2017; has been rejected.

Learned counsel for the Revenue, states that he has no objection if the matter is remanded to the Assessing Authority for deciding the case afresh. Also, the case shall be decided on merits. Also, during pendency of the case, no coercive steps shall be taken against the petitioner.

Statement accepted and taken on record.

However, having heard learned counsel for the parties as also perused the record made available, we are of the considered view that this Court, notwithstanding the statutory remedy, is not precluded from interfering where, *ex facie*, we form an opinion that the order is bad in law. This we say so, for two reasons- (a) violation of principles of natural justice, i.e. Fair opportunity of hearing. No sufficient time was afforded to the petitioner to represent his case; (b) order passed *ex parte* in nature, does not assign any sufficient reasons even decipherable from the record, as to how the officer could determine the amount due and payable by the assessee. The



order, *ex parte* in nature, passed in violation of the principles of natural justice, entails civil consequences. As such, on this short ground alone, we dispose of the present writ petition in the following mutually agreeable terms:

(a) We quash and set aside the impugned order dated 02.08.2021 passed by the Respondent No. 2 namely the Additional Commissioner of State Taxes (Appeal), Central Division, Patna in Appeal Case No. AD1003210031076, and the order dated 10.02.2021 passed by Respondent No. 3, the Deputy Commissioner of State Taxes, Special Circle, Patna under Section 73 of BGST Act, 2017;

(b) We accept the statement of the petitioner that ten per cent of the total amount, being condition prerequisite for hearing of the appeal, already stands deposited. If that were so, well and good. However, if the amount is not deposited for whatever reason(s), same shall be done before the next date;

(c) Further the petitioner undertakes to additionally deposit ten per cent of the amount of the demand raised before the Assessing Officer. This shall be done within four weeks.

(d) This deposit shall be without prejudice to the respective rights and contention of the parties and subject to



the order passed by the Assessing Officer. However, if it is ultimately found that the petitioner's deposit is in excess, the same shall be refunded within two months from the date of passing of the order;

(e) We also direct for de-freezing/de-attaching of the bank account(s) of the writ-petitioner, if attached in reference to the proceedings, subject matter of present petition. This shall be done immediately.

(f) Petitioner undertakes to appear before the Assessing Authority on 28.01.2022 at 10:30 A.M., if possible through digital mode;

(g) The Assessing Authority shall decide the case on merits after complying with the principles of natural justice;

(h) Opportunity of hearing shall be afforded to the parties to place on record all essential documents and materials, if so required and desired;

(i) During pendency of the case, no coercive steps shall be taken against the petitioner.

(j) The Assessing Authority shall pass a fresh order only after affording adequate opportunity to all concerned, including the writ petitioner;

(k) Petitioner through learned counsel undertakes to



fully cooperate in such proceedings and not take unnecessary adjournment;

(l) The Assessing Authority shall decide the case on merits expeditiously, preferably within a period of two months from the date of appearance of the petitioner;

(m) The Assessing Authority shall pass a speaking order, assigning reasons, copy whereof shall be supplied to the parties;

(n) Liberty reserved to the petitioner to challenge the order, if required and desired;

(o) Equally, liberty reserved to the parties to take recourse to such other remedies as are otherwise available in accordance with law;

(p) We are hopeful that as and when petitioner takes recourse to such remedies, before the appropriate forum, the same shall be dealt with, in accordance with law, with a reasonable dispatch;

(q) We have not expressed any opinion on merits and all issues are left open;

(r) If possible, proceedings during the time of current Pandemic [Covid-19] be conducted through digital mode;



The instant petition stands disposed of in the aforesaid terms.

Interlocutory Application(s), if any, also stands disposed of.

Learned counsel for the respondents undertakes to communicate the order to the appropriate authority through electronic mode.

(Sanjay Karol, CJ)

(S. Kumar, J)

K.C.Jha/-

AFR/NAFR	
CAV DATE	
Uploading Date	08.01.2022
Transmission Date	

